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25-9582

22 April 1975

MEMORANDUM FOR: Mr. Houston

SUBJECT: Commentary on "Legal Services and Procedures by a Hoover Commission Task Force".

1. Three general comments might be made at the outset. The bulk of this task force report does not have any direct impact on CIA. In discussing administrative procedures, it is concerned with those procedures directly affecting the general public and in discussing publication of organization, rules and the like, specific exceptions are included to cover sensitive agencies and information. Secondly, the discussions in the report go much further than the recommendations. It is therefore unsafe to rely entirely on the wording of the recommendations in forming conclusions with respect to the report. Thirdly, I recommend highly the dissent and separate statement by Commissioner Chet Holifield, starting on page 97, with which I am in practically complete agreement.

2. Recommendation #1 suggests that Congress review the justification for any existing legal staff. The discussion leading to the recommendation expresses the view that small legal staffs are undesirable and that agencies employing fewer than 10 lawyers should secure their legal advice from the Department of Justice. I submit that size has nothing to do with the effectiveness of a legal staff and for reasons set forth in paragraph 6 below, elimination of such staffs and reliance exclusively on the Department of Justice would probably result in less effective legal service. Since the number ten, is purely arbitrary, the fact that CIA's legal staff is larger provides no assurance that it would be preserved.

3. The discussion leading to recommendation #2 is concerned with coordination of legal advice on a government-wide basis and this would seem to be unobjectionable. The recommendation itself states what I have always considered to be a well-recognized fact that the Department of Justice is the chief law office of the Government.

4. Recommendation #3 calls for the establishment by congressional action of a voluntary procedure for resolving conflicting interpretations of law among agencies. The fact that the proposed procedure would be voluntary would not necessarily increase the quantity or variety of issues usually submitted to the Attorney General for resolution. Formalization

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of a procedure of this sort, however, at best would be merely a nuisance and at worst might discourage attempts to work out differences informally and on a practical basis.

5. Recommendation 4 calls for integration of each agency legal staff under a General Counsel or Assistant Secretary for Legal Affairs. In my opinion, integration is common practice. Which title is used can well depend on the size and organization of the Agency concerned.

6. Recommendations 6 through 10 deal with named Agencies other than CIA and they are therefore irrelevant. The discussion however leads up to recommendations 11 and 12 which would establish a legal career service for all civilian attorneys administered and controlled by the Department of Justice. The discussion of these recommendations is very broad indeed, but in my opinion it is based on a fundamentally unsound concept of the function and utility of government lawyers. The report would treat government lawyers in a rather formal fashion more as if they were private practitioners recruited and closely coordinated by the Department of Justice. The report fails to distinguish between the function of a private law firm and that of a house counsel in industry each of which has independent value for any organization having a certain minimum amount of legal work to be done.

In my opinion the Department of Justice is and properly should be in the position of a private law firm of specialists relative to its clients. Agency legal staffs, however, are equivalent to house counsel. The effectiveness and value of the latter type lawyer depend on his familiarity with the business of his client and the confidence placed in him by the officials he is advising. Such lawyers therefore bring to their day-to-day problems not only training in the law but also a broad view of the general objectives and specific problems of their Agency. Outside attorneys can not economically acquire such intimate knowledge nor is it necessary or desirable to meet the specific problems for which specialization is required.

The implication of a successful house counsel - employer relationship is that the employer must retain greater freedom to hire and fire his counsel than is safe under a merit system of employment with respect to other types of employees. A separate career service for lawyers involving recruitment and control by an external organization would cut across and inevitably impair the necessary close personal relationship between counsel and client. In this connection I might refer again

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to the discussion preceding recommendation 4 which is concerned with integration of legal staffs. While as above stated that recommendation, I believe, is desirable, nevertheless, in a large agency such as the Department of Defense such integration requires continuous attention by individual attorneys assigned to the various branches to gain and keep the confidence of their branch chiefs. This difficulty would be vastly increased as between more or less equal executive departments or agencies namely Justice or any of the other Agencies.

7. Recommendation 13 calls for higher salaries for senior attorneys. ~~It~~ objection.

8. Recommendation 14 refers to tenure which, in my opinion, is not a satisfactory basis for a good attorney - client relationship.

9. Recommendation 15 would limit veterans' preference to the first 5 years of a veteran's legal service and the grade of GS-12. In my opinion any veterans' preference, except in a selection between candidates of substantially equivalent suitability, is inconsistent with a merit system. Recommendation 15 is a compromise with this position and one which might have some chance of acceptance.

10. Recommendation 17 would prohibit private activities by government attorneys which conflict with their official duties. This appears to be an obviously desirable principle.

11. Recommendations 18 through 20 deal with military attorneys and do not concern CIA.

12. The rest of the report deals with legal procedures affecting relationships of the general public with government agencies. This would appear to have no impact on CIA for as above stated in my general comment, the recommendations dealing with publication of organization and internal procedures have adequate exceptions to exclude CIA.

13. In view of the undesirable recommendations discussed above I suggest that the Legislative Council be requested to keep track of any congressional activity related to the Legal Services and Procedure Report.

cc: C/Management Staff
Assistant to the Director
Mr. Pforzheimer ✓

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